IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 985 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HASMUKHBHAI MAFATBHAI PATEL - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR CHIRAG B PATEL for Applicant(s) : 1,
MR. RC Kodekar, Addl. PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.
MR NV GANDHI for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/07/2007
ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure the

petitioner - original-accused No.2 has prayed for an appropriate order quashing and setting aside the impugned complaint being C.R. No. I-75/2007 filed on 7.5.2007 for the offences alleged to have been committed on 2.3.2007 under Section 365, 506(2) and 114 of the Indian Penal Code read with Section 3(1) and (xv) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Shri Chirag Patel, learned advocate appearing on behalf of the petitioner has vehemently submitted that no offence has been committed by the petitioner – original-accused No.2 as alleged under Section 365, 506(2) and 114 of the Indian Penal Code read with Section 3(1) and (xv) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is submitted that on the contrary the petitioner tried to intervene and help the complainant and others and the only allegation against the petitioner in the complaint is that the

petitioner while intervening as an elderly member of the village told the complainant that he will see to it that the complainant's daughter is found within one week. It is submitted that on bare reading of the complaint it does not disclose any cognizable offence so far as the petitioner is concerned and therefore it is requested to quash the complaint by exercising the powers under Section 482 of the Cr.P.C., and under Article 226 of the Constitution of India.

3. On the other hand, Shri NV Gandhi, learned advocate appearing on behalf of respondent No.3, original-complainant has submitted that the daughter of the petitioner has been kidnapped by son of original-accused No.1 and they were not found and therefore a cognizable offence is made out in the complaint even against the petitioner; as the petitioner original-accused No.2 assured that his girl will be found out and produced within a period of one week and having failed the petitioner has

committed the offence as alleged and therefore it is requested to dismiss the present petition. Shri RC Kodekar, learned APP has requested to pass appropriate order.

4. Heard the learned advocates appearing on behalf of the respective parties. On bare reading of the complaint and the averments in the complaint the main allegations are against the original-accused No.1 and the only allegation against the petitioner is that the petitioner has intervened and assured that the girl of the complainant would be found out and produced within one week. Except the said averment, there is no other averment in the complaint against the petitioner. On bare reading of the complaint, it cannot be said that the petitioner has committed any offence as alleged under Section 365, 506(2) and 114 of the Indian Penal Code read with Section 3(1) and (xv) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Under these circumstances while taking the

complaint as it is and the averments in the complaint, to continue the criminal proceedings against the petitioner would be abuse of process of law as no case is made out against the petitioner. On the contrary, it appears that the petitioner has tried to help and intervene as an elderly member of the village and merely because inspite of his best efforts the girl is not found out, it cannot be said that the petitioner has committed the offence as alleged. Under these circumstances, the impugned order against the petitioner is required to be quashed and set aside.

5. For the reasons stated above, the impugned complaint/FIR, being C.R. No. I-75/2007 registered at Chhani Police Station is quashed and set aside so far as petitioner - original-accused No.2 is concerned. Rule is made absolute to the aforesaid extent.

[M.R. Shah, J.]

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